



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Unisys Corporation--Reconsideration

File: B-237005.2

Date: May 31, 1990

Bernard Fried, Esq., for the protester.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

General Accounting Office denies request for reconsideration of previous decision which upheld award to low evaluated offeror, in absence of evidence that low evaluated offer would result in other than the lowest ultimate cost to the government.

DECISION

Unisys Corporation requests reconsideration of our decision, Unisys Corp., B-237005, Jan. 5, 1990, 90-1 CPD ¶ 24, denying its protest against the award of a contract to Raytheon Company under request for proposals (RFP) No. F04606-89-R-0104, issued by the Air Force for spare parts for microwave radio terminal sets. We denied the protest because, based on an implicit representation by the agency that it did not intend to order substantial quantities of additional spare parts under the contract at higher prices from Raytheon, we found no evidence that acceptance of the low offeror's proposal would result in other than the lowest ultimate cost to the government.

We deny the request for reconsideration.

The agency issued the solicitation on January 10, 1989, for a firm, fixed-price indefinite quantity contract for 23 line items of spare parts for a period of 3 years. On June 30, the agency combined the solicitation with two other

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solicitations for similar spare parts, for a total of 48 line items. Each line item contained a minimum initial quantity, to be ordered upon award, and a maximum order quantity that the agency could purchase over the 3-year period of the contract.

The amended solicitation required potential offerors to submit prices for the minimum initial quantity of each line item; each offeror also submitted prices in four quantity ranges for each line item for each of the 3 years of the contract period; these 576 prices, applicable only if the agency should order parts in addition to the minimum initial quantity, were termed the "pricing matrix." The solicitation advised offerors that the agency would evaluate prices by adding the unit costs in the pricing matrix (quantity of 1 each) to the total cost of the minimum initial quantity (price multiplied by minimum initial quantity) and provided for award to the responsive, responsible offeror submitting the lowest evaluated offer. This scheme gave primary emphasis to the minimum initial quantity, which represented the agency's only firm requirement. The solicitation further provided that the government could reject any offer that was materially unbalanced as to prices for the minimum initial quantity and the matrix quantity ranges, defining unbalanced offers as any that were "based on prices significantly less than cost for some work and prices which are significantly overstated for other work."

The agency received two offers on July 20, 1989. Although the prices in the pricing matrix that the awardee submitted were generally higher than the prices in the matrix that the protester submitted, the awardee's prices for the minimum initial quantity were so low that when the agency applied the price evaluation criteria, Raytheon's evaluated price was low.^{1/} In its proposal, the awardee provided a

^{1/} For example, the awardee offered a higher price for line item 1 than did the protester in each quantity range (15-29, 30-64, 65-139 and 140-275), for each of three contract years; nevertheless, its price for the minimum initial quantity of 85, \$631 each, was considerably lower than the protester's price of \$746, so that its evaluated price for line item 1 (the 12 quantity range prices added to the price of the minimum initial quantity) was approximately \$8,000 less than the protester's.

justification for offering a lower price for the initial quantity, explaining in essence that it was passing along the advantage of a reduction in material and labor costs due to a concurrent "production buy" of the radio terminals by the Air Force in a separate procurement. The agency favorably considered this explanation and awarded a contract to Raytheon on August 16; it issued a delivery order for the minimum initial quantity on August 29. Unisys filed its initial protest after receiving written notification of the award.

In its initial protest, Unisys argued that the awardee's offer was mathematically and materially unbalanced, and that the maximum order quantities stated in the solicitation represented a valid estimate of the agency's probable needs over the 3-year contract period. The protester pointed out that any purchase in excess of 18 percent of the quantity remaining under the contract (that is, in excess of the minimum initial quantity already ordered) would result in the protester, and not the awardee, offering the lowest ultimate cost to the government, even considering the awardee's low cost for the minimum initial order quantity.

In response, we noted that consistent with Federal Acquisition Regulation § 16.504, which states that indefinite quantity contracts are for the specific situation where the agency is unable to determine its precise requirements during the contract period and it is inadvisable to commit the government to order more than a minimum quantity, the record did not support a conclusion that the maximum order quantity set forth in the solicitation was intended to be an accurate estimate of the agency's requirements.

The agency pointed out that having purchased the minimum initial quantity, it had no obligation to purchase additional quantities from the awardee. Further, the agency stated that the contracting officer had directed agency buyers, prior to issuing any further delivery orders under the contract, to review the abstract of offers to determine whether the contract offered the best price to the government or whether any new requirement should be recompeted to obtain a better price.

Absent any evidence that the agency intended to order any additional substantial quantities of spare parts from the awardee, we concluded in our prior decision that award to Raytheon was not likely to result in other than the lowest

overall cost to the government. Since the price evaluation was consistent with the solicitation's heavy emphasis on the minimum initial quantity and since the agency was not obligated to order and apparently would not in fact order substantial additional quantities at the higher prices from the awardee, we denied the protest.


In requesting reconsideration of this decision, the protester contends that the record in the original protest contained evidence that the agency intends to order additional quantities from Raytheon. The protester restates its belief that the maximum order quantity contained in the solicitation represented a valid estimate of the agency's requirements for the 3-year contract period. The protester points out that regardless of the review procedure instituted to ensure that buyers consider whether lower prices are available elsewhere, the agency offers no assurance that it will not order additional requirements in an amount that would negate its savings under the initial order.^{2/}

The record in the initial protest established that Raytheon submitted the low offer for the initial order quantity, but its offer was not low if the agency ordered any portion beyond 18 percent of the remaining quantity. Nevertheless, we denied the protest on the basis of the agency's implicit representation that it had no intention of awarding additional substantial quantities beyond the initial order quantity. In response to the reconsideration request, we have again contacted the agency to verify that it does not intend to order substantial additional quantities under the contract. The agency advises us that currently it has no requirements for the items, that budgetary reductions have reduced requirements in general and that it does not anticipate that its customers will generate new requirements for 6 months. The agency reiterates its intention to review any orders that may be received to ascertain whether placing orders at the price available under the Raytheon pricing matrix offers the best price to government or whether any new requirement should be recompeted to obtain a better price.

^{2/} The protester also alleges that the agency has funded the contract far beyond the initial order price. Our review of the contract shows, however, that funds will only be made available for each delivery order when placed.

While the protester disagrees with our finding that the award to Raytheon as the low evaluated offer is proper, such disagreement or reiteration of arguments previously made provide no basis for reconsideration. See Tecom Indus., Inc.--Request for Recon., B-236371.2, Feb. 13, 1990, 90-1 CPD ¶ 185. We find no evidence that the agency intends to order additional substantial quantities under the contract which would warrant reconsideration of our decision not to disturb the award to Raytheon.

The request for reconsideration is denied.


James F. Hinchman
General Counsel